

EXHIBIT LL

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of
THE COMMONWEALTH OF PUERTO
RICO, et al.,

Debtors.

PROMESA Title III
Case No. 17 BK 3283(LTS)

In re:
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of
THE EMPLOYEES RETIREMENT
SYSTEM OF THE GOVERNMENT
OF THE COMMONWEALTH OF
PUERTO RICO,

Debtor.

PROMESA Title III
Case No. 17-CV-01685(LTS)
Case No. 17-BK-03566(LTS)

C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF

ANDREW SAMWICK, Ph.D.

Monday, June 17, 2019

Reported By:

Michael D. O'Connor, RMR, CRR, CRC

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09:39:32 1 White & Case on behalf of the Puerto
09:39:35 2 Rico Funds. Apologies.
09:39:40 3 MR. GUMBS: This is Sean Gumbs
09:39:40 4 with FTI Consulting on behalf of the
09:39:42 5 Official Committee of Retirees.
09:39:44 6 MR. DALSEN: Thank you. And if I
09:39:45 7 could just ask also the people on the
09:39:46 8 phone to please moot their end unless
09:39:49 9 they're going to speak just to keep
09:39:51 10 background noise down. Thank you.
09:39:57 11 VIDEOGRAPHER: You may swear in
09:39:59 12 the witness.

13 * * *

14
15 ANDREW SAMWICK, Ph.D.,
16 having been satisfactorily identified by a
17 Massachusetts drivers license and duly sworn
18 by the Notary Public, was examined and
19 testified as follows:
20 EXAMINATION
09:40:02 21 BY MR. DALSEN:
09:40:02 22 Q. Please state and spell your name
09:40:04 23 for the record, please.
09:40:05 24 A. My name is Andrew Samwick,
09:40:05 25 A-n-d-r-e-w, S-a-m-w-i-c-k.

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12:42:32 1 No. 3, "Compare the economic functioning of the
12:42:36 2 pre-June 2017 ERS with the PayGo system,
12:42:41 3 including the relationship between ERS employer
12:42:45 4 contributions and PayGo fees."

12:42:47 5 Do you see that?

12:42:48 6 A. Yes.

12:42:48 7 Q. And what is the relationship
12:42:54 8 between employer contributions and PayGo fees?

12:42:56 9 A. Over time ERS has built up an
12:43:04 10 actuarial liability. ERS employer
12:43:09 11 contributions in prior years were a way to
12:43:12 12 provide funding to meet that liability. Going
12:43:16 13 forward, PayGo fees are going to be a source of
12:43:18 14 funding to meet that liability.

12:43:19 15 Q. Is that the full extent of the
12:43:28 16 relationship between employer contributions and
12:43:30 17 PayGo fees, in your opinion?

12:43:34 18 A. Well, sure, there's sort of a
12:43:35 19 mechanical relationship between them in that
12:43:42 20 because ERS historically allowed for employer
12:43:47 21 contributions that were less than the
12:43:51 22 actuarially required contributions, the
12:43:54 23 remaining unfunded actuarially liability is
12:43:59 24 bigger.

12:43:59 25 So the PayGo fees that are going

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12:44:01 1 to be required, because the system has no
12:44:03 2 assets stored up, PayGo fees will be bigger.
12:44:10 3 So had ERS contributions been larger, PayGo
12:44:14 4 fees wouldn't have to be as large.

12:44:16 5 Q. But in your view, speaking as an
12:44:25 6 economist expert in this case, the relationship
12:44:27 7 between employer contributions and PayGo fees
12:44:31 8 is that they are both ways to meet a liability;
12:44:35 9 is that fair?

12:44:36 10 A. Yes.

12:44:36 11 Q. I think you've testified that you
12:44:45 12 reviewed Act 106 to prepare your report?

12:44:48 13 A. Yes.

12:44:48 14 Q. Under Act 106, are PayGo fees the
12:44:51 15 only source of revenue to pay pensions?

12:44:58 16 A. Well, the system has no net assets
12:45:00 17 left. So if there's another source of revenue,
12:45:04 18 I'm not aware of it.

12:45:06 19 Q. And when you say "the system,"
12:45:08 20 what do you mean?

12:45:09 21 A. So I think I'm speaking about ERS
12:45:15 22 and the benefit entitlements that were accrued
12:45:19 23 by participants in ERS during their working
12:45:23 24 lives.

12:45:24 25 Q. And in Paragraph 9 of your report

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12:51:58 1 the beneficiaries of the system, does that
12:52:00 2 guarantee affect any other aspect of your
12:52:02 3 opinions expressed in your report?

12:52:04 4 A. I don't believe so.

12:52:06 5 Q. And so the comparison that you're
12:52:16 6 drawing in your report, and now I am going back
12:52:19 7 to Paragraph 7, No. 3, the comparison that
12:52:22 8 you're actually drawing in your report only
12:52:24 9 concerns a comparison of employer obligations;
12:52:27 10 is that right?

12:52:27 11 A. Yeah, that's fair.

12:52:31 12 Q. And beyond comparing the economic
12:52:44 13 functioning as it relates to -- I'm sorry, one
12:52:48 14 moment.

12:52:49 15 A. Sure.

12:52:49 16 MR. DALSEN: If you're on the
12:52:50 17 phone, could you please make sure that
12:52:52 18 you're muted. Thank you.

12:52:56 19 Q. And so, Dr. Samwick, beyond
12:52:59 20 comparing the economic functioning as it
12:53:06 21 relates to employer contributions, you're not
12:53:10 22 performing any other comparison for purposes of
12:53:13 23 your report; is that right?

12:53:15 24 A. Could I just ask you to repeat
12:53:17 25 that?

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12:53:17 1 (Reporter read back pending
12:53:33 2 question)
12:53:33 3 A. Well, I -- okay. So trivially,
12:53:37 4 I'm also comparing the benefit entitlements.
12:53:40 5 So I would describe this as there's a question
12:53:43 6 about whether Act 106 change benefit
12:53:48 7 entitlements, and I describe that as trivially,
12:53:53 8 because it did not.
12:53:55 9 And then the second piece of the
12:53:57 10 comparison is whether there's an equivalence
12:54:04 11 between the employer contributions under ERS
12:54:08 12 and the PayGo fees. So I would answer your
12:54:11 13 question that way.
12:54:12 14 Q. But beyond comparing the employer
12:54:29 15 contributions under ERS and the PayGo fees, and
12:54:34 16 as you described it, the trivial comparison of
12:54:37 17 whether Act 106 changed benefit entitlements,
12:54:40 18 you're not performing any other comparison for
12:54:43 19 purposes of your report?
12:54:45 20 A. I think that's fair.
12:54:46 21 Q. When I asked you about the
12:55:15 22 Commonwealth guarantee in Act 106 a few minutes
12:55:20 23 ago, you said that, if I'm not mistaken, that
12:55:23 24 the guarantee would provide greater certainty
12:55:26 25 to the ultimate beneficiaries, right?

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01:16:01 1 A. Hmm-hmm.

01:16:01 2 Q. Now, the beginning of Paragraph

01:16:06 3 8(b) says, "For many years before 2017, ERS was

01:16:11 4 not actuarially sound."

01:16:12 5 What's the basis for that

01:16:14 6 statement?

01:16:14 7 A. It had an unfunded actuarial

01:16:23 8 liability, and contributions continued to be

01:16:25 9 inadequate to properly amortize that unfunded

01:16:29 10 actuarial liability and its funding ratio

01:16:35 11 generally continued to decline.

01:16:37 12 Q. You testified earlier that you're

01:16:43 13 not an actuary. So my question is, how are you

01:16:48 14 qualified to render that opinion?

01:16:49 15 A. I can do the calculations, and I

01:16:56 16 can observe the data that's presented in the

01:16:59 17 actuarial valuation report, and the actuarial

01:17:05 18 valuation reports, at various times, call

01:17:07 19 attention to it as well.

01:17:08 20 Q. So beyond performing calculations

01:17:11 21 and relying what's on -- excuse me, what's in

01:17:15 22 the actuarial valuation reports, was there

01:17:17 23 anything else you did to arrive at your

01:17:20 24 statement that ERS was not actuarially sound

01:17:23 25 for many years before 2017?

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01:28:27 1 system as an act enacted under 106 as a single

01:28:32 2 system for purposes of your analysis?

01:28:33 3 A. Yes, that's fair.

01:28:34 4 Q. Did counsel to Movants ask you to
01:28:38 5 assume they constitute a single system?

01:28:41 6 A. No.

01:28:41 7 Q. And you don't have an opinion
01:28:44 8 either way as to whether they are one system as
01:28:47 9 a legal matter; is that right?

01:28:50 10 A. That's correct.

01:28:51 11 Q. Is it fair to say that your
01:28:58 12 opinion only addresses a single system from an
01:29:03 13 economic perspective, in your view?

01:29:07 14 A. Yeah, and if I could explain, I
01:29:15 15 think the determination of benefits that
01:29:17 16 beneficiaries receive under the Act 106 system
01:29:22 17 is explicitly tied to the benefits that they
01:29:27 18 earned an entitlement to under ERS. That
01:29:33 19 hasn't been changed. That's what unifies them,
01:29:36 20 in my mind, as one system, because that's the
01:29:38 21 economic purpose of this public sector pension
01:29:41 22 system.

01:29:48 23 Q. And so if the Court in this case
01:29:59 24 found that ERS and the PayGo system were
01:30:03 25 separate systems, in your opinion would not

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01:30:06 1 apply at all in this proceeding after the Court
01:30:08 2 made that finding?

01:30:09 3 MR. PAPEZ: Objection. Calls for
01:30:13 4 speculation. It's an incomplete
01:30:15 5 hypothetical, and probably also calls
01:30:17 6 for a legal conclusion.

01:30:19 7 Q. Do you understand the question?

01:30:20 8 A. I do. I wouldn't mind you
01:30:22 9 repeating it, though, if you want me to answer
01:30:24 10 it.

01:30:24 11 (Reporter read back pending
01:30:41 12 question)

01:30:41 13 A. I do think that is asking me to
01:30:43 14 draw a legal opinion about what's relevant in
01:30:45 15 light of a judge's decision.

01:30:49 16 Q. If you were asked to assume that
01:30:56 17 the ERS system and the PayGo system were
01:30:58 18 separate systems, how would that affect your
01:31:02 19 opinion?

01:31:02 20 MR. PAPEZ: Objection. Incomplete
01:31:04 21 hypothetical.

01:31:04 22 A. Well, I don't -- I don't know who
01:31:07 23 I'm allowed to ask for clarifying questions in
01:31:09 24 this hypothetical. I would still note that the
01:31:16 25 benefits that beneficiaries will be paid under

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01:31:21 1 the Act 106 system are determined by the
01:31:24 2 entitlements that they earned while they were
01:31:26 3 working under ERS.

01:31:30 4 So that wouldn't change unless a
01:31:32 5 law changes it. It hasn't.

01:31:34 6 Q. And so your opinions, as expressed
01:31:49 7 in Exhibit 1, don't say either way, they don't
01:31:56 8 account for either way, what would happen if
01:31:59 9 the Court found that ERS and PayGo are separate
01:32:02 10 systems?

01:32:02 11 MR. PAPEZ: Objection. Asked and
01:32:04 12 answered and another incomplete
01:32:06 13 hypothetical.

01:32:06 14 A. I apologize, I don't really know
01:32:08 15 what you mean by "what would happen."

01:32:11 16 Q. Your opinions would not change
01:32:12 17 either way if the Court said that ERS and the
01:32:16 18 PayGo system were separate systems?

01:32:19 19 MR. PAPEZ: Same objections.

01:32:20 20 A. Yeah, they -- the economic
01:32:25 21 analysis would not change. The benefits being
01:32:30 22 paid to beneficiaries after Act 106 are still
01:32:35 23 determined by the benefits to which they earned
01:32:38 24 an entitlement under ERS.

01:32:47 25 Q. In Paragraph 8(d) of your report

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01:40:34 1 A. I do understand your question.

01:40:36 2 And again, I don't have a specific answer.

01:40:38 3 Q. And as far as value of the
01:40:43 4 payments that you discussed earlier, what
01:40:45 5 magnitude of change would there needed to have
01:40:48 6 been for you to conclude in this case that
01:40:50 7 there was a consequential change?

01:40:51 8 MR. PAPEZ: Object to form.

01:40:52 9 Incomplete hypothetical.

01:40:53 10 Q. I'll just ask, do you understand
01:40:55 11 my question?

01:40:55 12 A. I do understand your question.

01:40:58 13 Given that the benefits are not
01:41:00 14 going to change, and they're all going to get
01:41:03 15 paid, what room is there to say that there has
01:41:05 16 been a consequential change in the amount of
01:41:09 17 employer contributions.

01:41:12 18 There was a change in the timing
01:41:13 19 of when those contributions are going to be
01:41:15 20 made.

01:41:19 21 Q. But what magnitude of change would
01:41:23 22 you have needed to see to conclude that there
01:41:26 23 was a consequential change as to the value of
01:41:33 24 payments that you discussed earlier?

01:41:35 25 MR. PAPEZ: Objection. Asked and

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01:41:37 1 answered.

01:41:40 2 Q. If you can answer.

01:41:41 3 A. It would have to be something
01:41:42 4 other than the timing of those contributions to
01:41:44 5 pay benefits that haven't changed.

01:41:47 6 Q. And did you consider anything
01:41:50 7 other than the timing of those contributions to
01:41:52 8 pay benefits in order to determine whether
01:41:54 9 there was a consequential change, in your
01:41:57 10 opinion?

01:41:58 11 A. No. Only that the benefits didn't
01:42:02 12 change, and thus, the unfunded actuarial
01:42:06 13 liability is not going to change, and thus, the
01:42:09 14 net present value of contributions is not going
01:42:11 15 to change. All of that absence of change
01:42:18 16 seemed to be well described by inconsequential.

01:42:20 17 Q. For the purpose of rendering your
01:42:41 18 opinions in this report, did you apply any
01:42:44 19 framework accepted in the field of economics to
01:42:47 20 determine whether the effects that we have been
01:42:49 21 talking about were consequential or
01:42:51 22 inconsequential?

01:42:52 23 A. Everything we're doing here is
01:42:57 24 subsumed, incorporated in, net present value
01:43:02 25 analysis.

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02:00:04 1 about Paragraph 8(e) of your report on Page 6
02:00:08 2 of Exhibit 1. The last sentence of Paragraph
02:00:12 3 8(e) is where I want to direct your attention.
02:00:15 4 Specifically it says, "The changes
02:00:17 5 in how the PayGo fees on employers are
02:00:21 6 calculated are ones that could have been made
02:00:24 7 to required employer contributions within ERS,"
02:00:29 8 and then it says, "and they do not represent a
02:00:32 9 substantial change in the nature of the
02:00:34 10 payments."

02:00:34 11 Do you see that?

02:00:35 12 A. I do.

02:00:36 13 Q. Now, when you say the changes
02:00:43 14 could have been made, what do you mean?

02:00:44 15 A. So as I understand ERS, as written
02:00:47 16 in Act 447, contributions that are made that
02:00:51 17 are less than the actuarially required
02:00:54 18 contributions were for most of the life of that
02:01:00 19 system an obligation of the employer. So ERS
02:01:02 20 could have gone and gotten those contributions
02:01:05 21 that the employers were obliged to pay.

02:01:09 22 So what is the PayGo fee? The
02:01:11 23 PayGo fee is a contribution from the employer
02:01:15 24 for beneficiaries that has to be made because
02:01:21 25 of prior underfunding in ERS.

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02:03:45 1 A. No. All I'm trying to do is make
02:03:47 2 an assertion that the change to require
02:03:54 3 employers to now pay additional contributions,
02:03:57 4 or a PayGo contribution, is something that
02:04:01 5 could have been done at earlier times during
02:04:06 6 the ERS.

02:04:07 7 I'm not trying to draw any
02:04:09 8 conclusion other than that one, so that's why I
02:04:12 9 focus in on that possible change.

02:04:14 10 Q. And then the last part of that
02:04:16 11 last sentence in Paragraph 8(e) says, "And they
02:04:20 12 do not represent a substantial change in the
02:04:23 13 nature of the payments."

02:04:24 14 Do you see that?

02:04:25 15 A. Yes.

02:04:25 16 Q. What do you mean by "substantial
02:04:27 17 change"?

02:04:28 18 A. Well, they're both anchored in the
02:04:31 19 same entity. They are anchored in the pension
02:04:40 20 benefits that employees under ERS accrued prior
02:04:47 21 to 2017.

02:04:48 22 Q. When you say they are anchored in
02:04:51 23 the same entity, what do you mean?

02:04:56 24 A. The benefits were promised. They
02:04:58 25 could have been funded in advance. They

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02:05:00 1 weren't. To the extent that they were not
02:05:02 2 funded in advance, they now have to be funded
02:05:06 3 as they come due. Thus, you have a PayGo
02:05:11 4 system.

02:05:11 5 Q. And you don't consider that
02:05:17 6 process you just described to constitute a
02:05:20 7 substantial change?

02:05:21 8 A. Referring back to what begins the
02:05:24 9 paragraph, in economic terms, they are still
02:05:30 10 required to make employer payments, now called
02:05:32 11 a PayGo fee, previously an employer
02:05:35 12 contribution, to meet the pension obligations
02:05:38 13 that were accrued by their current and former
02:05:44 14 employees while those employees were
02:05:47 15 participants in ERS.

02:05:48 16 Q. And when you talk about the
02:05:53 17 "nature of the payments" in that last sentence
02:05:56 18 in Paragraph 8(e), what do you mean?

02:05:58 19 A. Well, the nature of the payments
02:06:01 20 is derived again from the benefits that were
02:06:05 21 accrued by employees working for various
02:06:13 22 employers under ERS.

02:06:14 23 Q. Do you know how PayGo fees are
02:06:36 24 calculated?

02:06:37 25 A. I have some understanding of it,

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02:06:41 1 sure.

02:06:41 2 Q. What's your understanding?

02:06:43 3 A. That employers are assessed a
02:06:45 4 PayGo fee based on the entitlements that their
02:06:51 5 system members accrued while working in their
02:06:53 6 employ.

02:06:53 7 Q. And do you know how required
02:06:59 8 contributions under the pre-June 2017 ERS were
02:07:03 9 calculated?

02:07:03 10 A. Again, I have some understanding.

02:07:05 11 Q. And what's that understanding?

02:07:06 12 A. That the amount of the actuarially
02:07:11 13 required contribution is the normal cost, plus
02:07:14 14 some amortization of the unfunded accrued
02:07:18 15 liability.

02:07:18 16 Q. And it's your opinion that those
02:07:33 17 two ways of calculating, in the one case, a
02:07:38 18 PayGo fee, and the other case, the required
02:07:41 19 contribution, do not constitute a substantial
02:07:43 20 change in the nature of payments?

02:07:45 21 A. Yes. I mean, that's made even
02:07:46 22 more clear by ERS now being closed with no
02:07:51 23 further benefit accruals. So this is just a
02:07:53 24 question of when that unfunded actuarial
02:07:59 25 liability is going to be drawn down to zero.

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02:08:01 1 In the Pay-As-You-Go process,
02:08:04 2 that's done basically as slowly as possible,
02:08:08 3 with no advance funding of any kind. Any other
02:08:12 4 system would bring in almost by definition some
02:08:16 5 more advanced funding.

02:08:18 6 The intent, if not the practice,
02:08:22 7 when ERS was operating prior to 2017 was that
02:08:25 8 there should be some advance funding.

02:08:34 9 Q. And your opinion is that the
02:08:39 10 change from a system with advance funding to a
02:08:43 11 system without any advance funding is not a
02:08:46 12 consequential change?

02:08:47 13 A. Keeping -- provided that the
02:08:55 14 present value of those payments is the same.
02:09:00 15 I'm acknowledging that the timing changes, but
02:09:04 16 the present value is anchored in the benefit
02:09:07 17 entitlements that employees accrued under the
02:09:10 18 ERS system.

02:09:12 19 So given that the benefits don't
02:09:14 20 change, and that employers under ERS are being
02:09:24 21 assessed a PayGo fee, based on those
02:09:27 22 obligations, yes, I call the change to be one
02:09:32 23 of timing only to be both inconsequential and
02:09:38 24 not substantial in this paragraph.

02:09:39 25 Q. So, economically speaking, if an

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02:10:11 1 employer reimburses the Commonwealth for
02:10:13 2 specific dollar amounts actually paid to
02:10:17 3 pensioners, is that the same or different from
02:10:20 4 an employer making a required contribution in
02:10:22 5 the pre-2017 ERS system?

02:10:25 6 MR. PAPEZ: I'm going to object to
02:10:32 7 form on that. Incomplete hypothetical.

02:10:37 8 A. I'm sorry, can you read it back to
02:10:39 9 me.

02:10:39 10 (Reporter read back pending
02:11:00 11 question)

02:11:00 12 A. It's the same employee or former
02:11:04 13 employee?

02:11:04 14 Q. Yes.

02:11:11 15 A. And the question is, does paying
02:11:13 16 it in 2019, when it comes due, versus 2015 or
02:11:15 17 2010 when it's accrued, is that -- can you fill
02:11:20 18 in the -- can you give it to me again, the
02:11:22 19 exact language?

02:11:23 20 MR. DALSEN: You can reread the
02:11:24 21 question again.

02:11:45 22 (Reporter read back pending
02:11:46 23 question)

02:11:47 24 A. Well, it's not identical, but it's
02:11:49 25 a payment made later, because a payment earlier

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02:11:52 1 wasn't made.

02:11:52 2 Q. Do you know whether, economically
02:12:05 3 speaking, under the PayGo system if all the
02:12:08 4 retirees of a given employer pass away, would
02:12:12 5 that employer have to pay future PayGo fees to
02:12:15 6 the Commonwealth?

02:12:16 7 MR. PAPEZ: Objection. Incomplete
02:12:18 8 hypothetical. Assumes facts not in
02:12:19 9 evidence as well.

02:12:20 10 Q. Do you know?

02:12:20 11 A. I don't know the answer to that.

02:12:22 12 Q. Economically speaking, under the
02:12:30 13 pre-June 2017 ERS system, if an employer had no
02:12:36 14 current retired employees, but did have active
02:12:40 15 employees on its payroll, would the employer
02:12:43 16 still have to contribute a percentage of
02:12:45 17 payroll in additional uniform contributions?

02:12:52 18 MR. PAPEZ: Object to form.
02:12:57 19 Incomplete hypothetical. Also assumes
02:12:58 20 facts not in evidence.

02:13:00 21 A. I apologize, can you read it to me
02:13:02 22 again?

02:13:02 23 (Reporter read back pending
02:13:24 24 question)

02:13:24 25 A. If he had active employees, that

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02:23:30 1 verbatim, to a paragraph we've already
02:23:33 2 discussed?
02:23:33 3 A. Yes.
02:23:33 4 Q. And when you use the phrase here
02:23:36 5 "could have been made," do you also mean a
02:23:38 6 non-zero possibility?
02:23:39 7 A. Yes.
02:23:54 8 MR. DALSEN: Okay. Let's just
02:23:56 9 take five minutes?
02:23:56 10 MR. PAPEZ: Sure.
02:23:58 11 VIDEOGRAPHER: The time is 2:24
02:23:59 12 p.m. We're now off the record.
02:24:01 13 (Recess taken at 2:24 p.m. and
02:24:05 14 reconvening at 2:32 p.m.)
02:31:26 15 VIDEOGRAPHER: The time is 2:32
02:31:30 16 p.m. We are now on the record.
02:31:32 17 BY MR. DALSEN:
02:31:32 18 Q. Dr. Samwick, you said earlier
02:31:34 19 today that you reviewed the rebuttal report
02:31:37 20 from Mr. Sher?
02:31:40 21 A. Yes.
02:31:40 22 Q. Did you reach any conclusions
02:31:42 23 after reviewing that rebuttal report?
02:31:45 24 A. I wasn't asked to draw any
02:31:49 25 conclusions.

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02:31:50 1 Q. Did you reach any conclusions,
02:31:51 2 regardless of whether you were asked to draw
02:31:53 3 them?

02:31:53 4 A. I didn't see how it had
02:31:58 5 invalidated or rebutted the conclusions I drew
02:32:01 6 in my own report.

02:32:02 7 Q. And why specifically did you feel
02:32:07 8 that way after reading Mr. Sher's report?

02:32:09 9 A. He objected to basically, I think
02:32:15 10 it's Paragraph 8(d), and I thought didn't
02:32:20 11 provide a very compelling counterargument.

02:32:25 12 Q. Any specific reason why he did not
02:32:27 13 provide a particularly compelling
02:32:28 14 counterargument, in your view?

02:32:30 15 A. I think you'd have to ask him.

02:32:35 16 Q. Okay. Did you disagree with any
02:32:39 17 of the methods that Mr. Sher used in his
02:32:42 18 rebuttal report?

02:32:43 19 A. You know, I would benefit from a
02:32:46 20 copy of it if we're going to have a long
02:32:50 21 discussion about it.

02:32:51 22 Do you have a copy I can see?

02:32:52 23 Q. Just answer my question. Do you
02:32:56 24 recall sitting here, without looking at the
02:32:58 25 report, whether you disagreed with any of the

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02:33:01 1 methods that Mr. Sher used in his rebuttal
02:33:05 2 report?

02:33:05 3 A. I'm having trouble coming up with
02:33:07 4 a particular method that he used.

02:33:08 5 Q. Okay.

02:33:08 6 (Document marked as Samwick
02:33:59 7 Exhibit 5 for identification)

02:33:59 8 Q. Dr. Samwick, you have been handed
02:34:05 9 what the court reporter has marked as Exhibit
02:34:06 10 5, which is the expert rebuttal report of
02:34:09 11 Lawrence J. Sher, dated June 12, 2019.

02:34:16 12 Now that you have the report, I'll
02:34:19 13 ask you do you recall, upon reviewing the
02:34:27 14 report, whether you disagree with any of the
02:34:29 15 methods Mr. Sher used in his report?

02:34:33 16 A. If I'm not going to have the time
02:34:34 17 to peruse it here, perhaps you could tell me a
02:34:37 18 specific method, and then I can answer you
02:34:41 19 about that specific method.

02:34:43 20 Q. You can take a moment to peruse
02:34:47 21 it.

02:35:14 22 A. Thank you.

02:35:14 23 So again, I don't see anything I
02:35:16 24 would describe as a method. So if you could
02:35:17 25 give me an example of a method, I could answer

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02:35:19 1 your questions about it.

02:35:20 2 Q. It appears, though, that you

02:35:31 3 disagree with the conclusions that Mr. Sher

02:35:33 4 reached, at least in some respects?

02:35:35 5 A. Well, his conclusions appear to be

02:35:39 6 I disagree with. So I don't think he has cause

02:35:42 7 to disagree, but that's his conclusion.

02:35:44 8 Q. And when you say you don't believe

02:35:50 9 he has cause to disagree, is there any

02:35:52 10 particular fault that you find with the

02:35:55 11 arguments and information that he provided in

02:35:58 12 his rebuttal report?

02:35:59 13 A. Well, the two places of

02:36:02 14 disagreement appear to be his Paragraph 23 and

02:36:08 15 his Paragraph 24.

02:36:16 16 So if I -- can I sort of walk

02:36:19 17 through 23 and 24?

02:36:20 18 Q. Yes, of course.

02:36:23 19 A. So the first claim made in

02:36:25 20 Paragraph 23 is that Mr. Sher disagrees with

02:36:29 21 the first sentence of what I think is Paragraph

02:36:34 22 8(d), "because under a Pay-As-You-Go approach

02:36:37 23 there are no contributions and no funding."

02:36:40 24 The specific statement with which

02:36:43 25 he's disagreeing is, "Conceptually, a change

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02:36:47 1 from a funded defined benefit system to a
02:36:50 2 Pay-As-You-Go defined benefit system is a
02:36:53 3 change only in the timing of the contributions
02:36:55 4 made by the sponsor of that system to support
02:36:58 5 benefit payments."

02:37:00 6 Okay. So I don't know how you can
02:37:03 7 say under a Pay-As-You-Go approach there are no
02:37:05 8 contributions. What is a PayGo fee if not a
02:37:08 9 contribution?

02:37:11 10 In economic framework, I would
02:37:14 11 regard a PayGo fee as a contribution. So we're
02:37:19 12 disagreeing about terminology there.

02:37:27 13 The statement, "There are no
02:37:28 14 contributions to fund a trust to pay for
02:37:31 15 participants' pension benefits" is true. But I
02:37:43 16 don't think it's a reason to disagree.
02:37:46 17 "Rather, pension benefits are made directly to
02:37:48 18 retired participants from general (i.e.,
02:37:51 19 non-segregated) assets as each payment comes
02:37:53 20 due."

02:37:53 21 I don't understand why it would be
02:37:57 22 proper to refer to PayGo fees as general
02:38:03 23 assets. That strikes me as odd. A PayGo fee
02:38:10 24 does not appear to be a general asset anymore
02:38:15 25 than an employer contribution under ERS was a

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02:38:16 1 general asset.

02:38:19 2 "Thus, the amount of money

02:38:21 3 required to pay the" benefits "must be

02:38:22 4 determined by calculating the amount of the

02:38:24 5 current pension payments."

02:38:28 6 Again, that's true, but that's not

02:38:30 7 a disagreement with the statement that I made.

02:38:33 8 Right? It's a change only in the timing of

02:38:35 9 contributions made by the sponsor. I sort of

02:38:41 10 acknowledged that the net present value of

02:38:43 11 those contributions, my word, are going to be

02:38:45 12 the same. They're going to equal the unfunded

02:38:49 13 actuarial liability because the system is

02:38:51 14 closed and no further benefits are being

02:38:53 15 accrued.

02:38:54 16 So I don't see how this is a

02:38:57 17 disagreement rather than just a refusal to

02:39:00 18 acknowledge that there are such thing as PayGo

02:39:05 19 fees, the way they are calculated, and the way

02:39:07 20 they will be paid off.

02:39:09 21 So I couldn't make much out of

02:39:11 22 this. I didn't feel like it was a critique.

02:39:16 23 So that's my response to his first

02:39:19 24 disagreement.

02:39:20 25 Shall I go on to my response to

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02:39:25 1 his second disagreement?

02:39:26 2 Q. Yes, please.

02:39:27 3 A. I disagree with the third

02:39:29 4 sentence, he says "because the cost of paying

02:39:32 5 benefits under a funded defined benefit system

02:39:33 6 can be materially lower in the long-term (when

02:39:36 7 compared to a pay-as-you-go approach) on

02:39:39 8 account of the earnings of the plan's assets."

02:39:42 9 That's just the simple math of net

02:39:45 10 present value. So again, that doesn't

02:39:48 11 contradict what I said. What I said is it's a

02:39:52 12 change only in the timing, earlier

02:39:54 13 contributions have a higher net present value

02:39:57 14 than later contributions.

02:39:59 15 So again, I didn't really see how

02:40:02 16 that, to the extent it's a true statement, but

02:40:06 17 it's part of what I was saying, not a

02:40:08 18 disagreement with what I was saying.

02:40:13 19 Okay. That's my -- I think that

02:40:15 20 answers your question.

02:40:16 21 Q. Yes. Thank you.

02:40:18 22 When you said for Paragraph 23

02:40:20 23 that you believe there were contributions, you

02:40:23 24 were talking about contributions in economic

02:40:24 25 terms. What is a contribution in economic

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02:40:27 1 terms?

02:40:28 2 A. I use the word "contribution" to

02:40:30 3 describe any payment made by the employer.

02:40:34 4 Q. Okay. Dr. Samwick, do you

02:40:50 5 understand you may be called for

02:40:51 6 cross-examination in this proceeding in New

02:40:53 7 York on July 2nd?

02:40:54 8 A. Yes.

02:40:54 9 Q. Where do you plan to be on July

02:40:57 10 2nd?

02:40:57 11 A. In New York available for

02:40:58 12 cross-examination.

02:40:59 13 Q. Okay.

02:41:07 14 MR. DALSEN: Okay. I think with

02:41:08 15 that, I just want to make a short

02:41:11 16 statement, then I'll pass the witness.

02:41:14 17 The short statement being that I have to

02:41:16 18 reserve the right to redepose

02:41:18 19 Mr. Samwick if there's, in fact, some

02:41:20 20 new declarations served on June 21st.

02:41:25 21 Matt, you mentioned something

02:41:26 22 about that earlier. I think we should

02:41:28 23 chat about that.

02:41:30 24 But to the extent that there is

02:41:32 25 some new declaration, you know, we have